

Exhibit 9

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NINO MARTINENKO, on behalf of
herself and others similarly situated,

CASE NO. 22 CV 518 (LJL)

Plaintiff,

v.

212 STEAKHOUSE, INC., and
NIKOLAY VOLPER,

Defendants.

DECLARATION OF NINO MARTINENKO

I, Nino Martinenko, under penalty of perjury, affirm as follows:

1. I am the Named Plaintiff in this action. I am familiar with the facts and circumstances set forth herein.
2. I submit this declaration in support of Plaintiff's motion for class certification pursuant to Fed. R. Civ. P. 23.
3. I worked at 212 Steakhouse (the "Restaurant") as a server from 2016 through 2018, and then again from early 2021 through December 2021.
4. During my entire time working at the Restaurant, the Restaurant maintained daily and weekly tip sheets that showed the amount of tips that each front of house employee (servers, runners, bussers, and bartenders) received.
5. Attached as **Exhibit 1** are examples of the daily tip sheets that were used at the Restaurant. The daily tip sheets in this Exhibit are from March 20, 2021; and June 11, 2021. I understand that these were produced by the Defendants in this lawsuit.
6. Attached as **Exhibit 2** are true and correct copies of examples of the weekly tip sheets that

were used at the Restaurant. The weekly tip sheets in this Exhibit are from May 6-12, 2017; December 18-24, 2017; May 22-28, 2021; and November 22-28, 2021. I only have copies of a few weekly tip sheets from the Restaurant.

7. The Restaurant paid employees by handwritten checks. Sometimes I wrote out the checks. During my first period of employment from 2016 to 2018, the Restaurant did not give me pay stubs or other wage statements with my pay.
8. Attached as **Exhibit 3** are true and correct copies of pay stubs for the Restaurant's front of house employees. I received these documents from Imran Sajid so that I could write out employees' paychecks. The pay stubs in this Exhibit are for the following pay periods: March 22-28, 2021; September 27-October 3, 2021; November 15-21, 2021, November 29-December 5, 2021.
9. Mr. Sajid did not have a formal title at the Restaurant. However, among other things he assisted with the payroll process.
10. I have reviewed the list of front of house employees that is attached as Exhibit 2 to the December 8, 2022 declaration of Michael DiGiulio.
11. I recall working with the following front of house employees who are not included in that list during my first period of employment: servers Mariken, Alina, Kelsey Foley, and Stefana; bussers Tristan Collazo and Luis Quizphi; runners Noel and Miguel; and bartenders Cinzia Bonferraro, Nadia, and Danny. Merikin, Kelsey Foely, Stefena, Tristan Collazo, Luis Quizphi, Noel, and Miguel are included in the weekly tip sheets submitted with this declaration. *See Ex. 2, p.1-2.* To the best of my recollection, I worked with all of them between 2016 and 2018. I believe I worked with additional front of house employees during that time period whose names I do not currently recall.

12. I recall working with the following front of house employees in 2021 who are not included in the list attached as Exhibit 2 to the DiGiulio declaration: Damian, Gian Carlos, and Ilya. These individuals are included in the daily and/or weekly tip sheets submitted with this declaration. *See* Ex. 1, p. 2; Ex. 2, p.3-4. I believe I worked with additional front of house employees in 2021 whose names I do not currently recall.

13. Defendants did not present me with, nor did I sign, a written wage notice.

14. During my employment with Defendants from 2016-2018, Defendants never gave me a wage statement.

15. I am familiar with the payroll practices at 212 Steakhouse as well as the claims in this lawsuit.

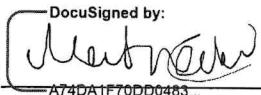
16. I am prepared to act as a class representative in this action.

17. As a class representative, I am prepared to vigorously pursue the claims of my coworkers.

18. I do not have any conflicts of interest with any of the other employees who work or worked at 212 Steakhouse.

I declare under penalty of perjury of the law of the United States that the foregoing is true and correct.

Dated: 12/9/2022

DocuSigned by:
By: 
Nino Martinenko
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